

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

APPEAL FROM PENALTY BY)
CITY OF TUKWILA,)
)
Appellant,)
)
vs.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)
_____)

PCHB No. 53

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This is an appeal by the City of Tukwila from a civil penalty of \$250.00 imposed by the Puget Sound Air Pollution Control Agency for burning without a permit.

The appeal was heard on the 2nd day of August, 1971, in the hearing room at the Puget Sound Air Pollution Control Agency office at 410 West Harrison Street, Seattle, Washington, with the appellant City of Tukwila being represented by Mr. A. Wesley Hodge, its attorney, and the respondent Puget Sound Air Pollution Control Agency being represented by Mr. Stanley Burkey of Burkey, Marsico, Rovai & McGoffin, its attorneys. The Chairman of the Pollution Control Hearings Board, Matthew W. Hill, presided at the hearing.

This appeal is basically a challenge by the City of Tukwila to the authority of the Puget Sound Air Pollution Control Agency to refuse a permit to let the City burn a great mass of debris which the City had accumulated or assembled in an open field in an industrial area of the City.

FINDINGS OF FACT

I.

The material burned was the remains of the buildings and furnishings of the former fire and police station of the City of Tukwila which burned in October, 1970.

II.

The material remaining on the site after that fire was in December, 1970 hauled in steel bedded trucks to a field in an area zoned as Industrial where it remained until consumed in the fire with which we are presently concerned in April, 1971. It was extensive in amount, the weight being estimated at several hundred tons.

III.

This material could have been disposed of by hauling a matter of four or five miles further to a public disposal site, which would have cost several thousand dollars.

IV.

The City, desiring to burn this debris and eliminate an unsightly and potentially dangerous situation, both formally and informally requested a permit from the Puget Sound Air Pollution Control Agency, pointing out the cost and the inconvenience of moving the debris, and the care and safeguards which would be

taken to control the fire.

V.

The Puget Sound Air Pollution Control Agency consistently refused to grant a permit taking the position that there was another means of disposal reasonably available.

VI.

Certain city officials then decided to and did burn the debris without a permit; taking adequate precautions to control the fire, and to make a quick burning fire with intense heat to minimize the time and extent of any pollution resulting therefrom.

VII.

The City claims a tacit permission by the Puget Sound Air Pollution Control Agency based on a sentence in a letter written by the Agency on March 22, 1971, denying a permit. The sentence reads:

"If you intend to have the outdoor fires under the exemption listed in Sub-Sections 3, 4, 5, and/or 7 of Section 9.02 of Article 9 of Regulation I, the Fire Chief and or yourself (Mr. Gordon Hull, the Assistant City Supervisor to whom the letter was addressed) must assume all responsibility in the event of adverse citizen reaction to these outdoor fires."

From these facts we reach the following

CONCLUSIONS

I.

That the remedy of the City of Tukwila, if it deemed the refusal of the Puget Sound Air Pollution Control Agency to issue a permit to be arbitrary and unreasonable, was to appeal that refusal to the Pollution Control Hearings Board. The Agency's

refusal was appealable, and had there been an appeal, there would have been a hearing at the earliest date on which counsel for the Agency and the City could agree.

II.

The quoted sentence in Finding VII is not a tacit permission to burn, nor an excuse for the City to take the law into its own hands and burn without a permit; it is no more than a warning that even if the City could bring itself within any of the exceptions to Section 9.02(a) of Regulation I of the Puget Sound Air Pollution Control Agency, it (the City) was still answerable at the bar of public opinion.

III.

The fire set by the City of Tukwila was a violation of Section 9.02(a) of Article 9 of Regulation I relating to outdoor fires unless the City could prove that it came within one of the exceptions contained in that section.

IV.

The only exceptions available to the City as enumerated in that section, i.e., (3), (4) and (5), were each subject to the proviso "that no alternate means of disposal is reasonably available."

V.

Alternate means of disposal were reasonably available.

VI.

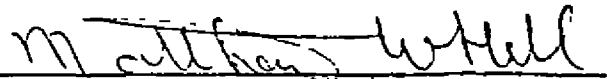
The Puget Sound Air Pollution Control Agency was authorized in imposing a penalty on the City of Tukwila for deliberately burning the debris after a permit had been refused.

ORDER


The civil penalty of \$250.00 for burning imposed upon the City of Tukwila by the Puget Sound Air Pollution Control Agency is hereby affirmed.

DONE at Olympia, Washington this 5th day of October, 1971.

POLLUTION CONTROL HEARINGS BOARD


MATTHEW W. HILL, Chairman


WALT WOODWARD, Member


JAMES T. SHEEHY, Member